

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF:)	
)	
Request for Review of the Decision of)	CC Docket No. 02-6
Universal Service Administrator)	
)	
KNOX COUNTY SCHOOLS)	
Knoxville, Tennessee		

Request for Review

The Knox County, Tennessee School District (“Knox County” or the “District”), pursuant to and in accordance with Sections 54.719 – 54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby requests the review of Administrator’s Decision on Implementation Deadline Extension Request issued by the Universal Service Administrative Company (“USAC”) as administrator of the E- Rate Program (“E-rate”). Knox County respectfully submits that under the circumstances there is good cause for the Commission to waive the service delivery deadline in question. In particular, Knox County¹ appeals the December 21, 2012 Administrator’s Decision on Appeal². *See Exhibit 1, Administrator’s Decision on Appeal.*³

In the Administrator’s Decision, the reason for denial states: “FCC Rules related to the payment of support for discounted services establish deadlines for service providers to deliver services/products to the applicant. The FCC provides an extension of this deadline under certain conditions. In accordance with FCC Report and Order (FCC

¹ Knox County’s Billed Entity Number (BEN) is 128407.

² The Form 471 in question is 742486. The funding requests involved are: 2034810, 2036281, 2036307, 2036349, 2036378, 2036450 and 2036475.

³ This Request for Waiver is timely filed in accordance with Sections 54.720 and 1.4 of the Commission’s Rules within 60 days of the denial.

01-195) released on June 29, 2001, in order to provide additional time to implement contracts or agreements with service providers for non-recurring services, applicants must submit documentation to the Administrator requesting relief on or before the original non-recurring services deadline. Your appeal has not brought forth clear information establishing that application for relief was made prior to this deadline. Therefore, your appeal is denied.”

Given the documentation provided as part of the USAC appeal process, the denial decision is without merit and without justification. Knox County respectfully requests the Commission to overturn the denial and grant a waiver to allow the implementation deadline extension request. Any other action would be contrary to the spirit and the goals of the E-Rate program.

Background

Knox County, Tennessee school system is a metropolitan school district comprised of 88 schools and over 56,000 students.⁴ Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections⁵. Under this regulatory authority, Knox County annually submits E-rate application(s) for discounts on eligible products and services. During the application period for the 2010-2011 E-rate funding year, Knox County submitted 24 Forms 471 for varying services. Funding Commitment Decision Letters

⁴ Statistics available at:
<http://knoxschools.org/modules/cms/pages.phtml?sessionid=6a9098c9ecd1f175830b20faff5d3e28&pageid=93508&sessionid=6a9098c9ecd1f175830b20faff5d3e28>.

⁵ 47 C.F.R. §§ 54.502, 54.503

(“FCDL”) for those applications were issued between December 14, 2010 and September 21, 2011.

Service Deadline Extension Requests

At issue in this waiver request is one singular Form 471, containing 27 individual and distinct funding request numbers (FRNs). The services associated with this Form 471 application were within the scope of E-rate eligible services and within the regulatory framework for services provided by the FCC and an approved FCDL for the application was issued on January 19, 2011.

On September 2, 2011, the District submitted an “E-rate Services Delivery Deadline Request” for 8 FRNs (all FRNs referenced in footnote 2, plus the addition of FRN 2034797) to USAC⁶. On October 20, 2011, Knox received an Administrator’s Decision on Implementation Deadline Extension Request approving the extension for FRN 2034797 *only*.⁷ Alarmed by the single FRN approval with no decision on the other seven FRNs, the District immediately contacted USAC via the “Submit a Question” feature on the website and questioned the single FRN approval.⁸ USAC responded with a copy of a letter for a different Form 471 than the one involved in the request (thereby not answering the District’s original questions and leaving the District even more confused). The District was understandably perplexed because the response did not answer the questions the District had posed about the original request and also, referenced a completely different Form 471. The District followed up with questions to USAC using the same case number on December 7, 2011...however, *no response* was ever given by USAC to the District.

⁶ See Exhibit 2, *Knox County E-rate Services Delivery Deadline Request*

⁷ See Exhibit 3, *Administrator’s Decision on Implementation Deadline Extension dated October 20, 2011*

⁸ Case #22-294758

The District subsequently reviewed their submission and noticed an error – while the first FRN on the list was correct, the other seven FRNs were incorrect – they were not even on the referenced Form 471. Clearly, the District used the wrong source list when preparing the original request. At no time was the District notified by USAC of the error, nor did the District ever actually receive a denial letter for the seven FRN extensions requested. The District simply received nothing from USAC regarding the seven FRNs, even after repeated outreach by the District to USAC – it was as if the original request for those FRNs had fallen into the proverbial black hole.

There is no dispute in this Request for Waiver about whether E-rate regulations allow for service deadline extensions. Without question, the program allows for an extension of time to remedy issues that arise with late funding approval of Priority Two requests, or delays encountered during the implementation of these large projects. Knox County acknowledged the need for the request under program rules and believed they properly executed the request on September 2, 2011, almost 30 days before the Implementation Deadline.

Bishop Perry

The sole issue in this case is the error made by the District in listing the impacted FRNs. In the landmark *Bishop Perry Order* (released May 19, 2006⁹), the FCC directed USAC to “provide all E-rate applicants with an opportunity to cure ministerial or clerical errors” within their E-rate applications. While the FCC decision focused primarily on the errors found in Forms 470 and 471, it would logically follow from the language of the decision that the FCC would expect similar treatment to easily correctable application process errors. Indeed, the issue at hand in this case was undoubtedly precisely what the

⁹ http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-54A1.pdf

FCC had in mind when it crafted the language of the decision and departed from significant Commission precedent.

If one thing is clear and tantamount to the FCC's point in *Bishop Perry*, it is that USAC guidelines should NOT impede the spirit and goals of the E-rate program by relentless focus on procedure. Yet, in this case, USAC chose both by the original denial and subsequent appeal denial to withhold approved funding associated with the seven funding requests because of an error in listing correct FRNs. Although Knox County may have been in accidental error by unknowingly listing the incorrect FRNs, the evidence shows that the District was unaware of the error and simply believed it was filing necessary extension requests in accordance with program rules. It is not unreasonable to expect under the aegis of *Bishop Perry*, that USAC exercise due diligence to support the needs of the needs of the applicant by contacting the applicant and alerting the applicant of the error. Once USAC began to process the request and discovered the FRN error (that the FRNs were not actually tied to the Form 471 noted), the easiest and most applicant-friendly course of action would have been to immediately contact the District and alert the contact person of the problem so that it could be immediately corrected. However, that wasn't done in this case. Even when the District reached out to USAC and questioned the denial of the extensions for those particular FRNs, USAC failed to respond and advise of the error. Meanwhile, the District believed that their submissions to be correct and was simply unsure of why an approval for those FRNs' extension requests had not been issued. Only after an internal review did the District discover the error – USAC did not even provide a denial letter for the extension

request of those FRNs...USAC simply never acknowledged the request for those FRNs in any manner.

To withhold funding from the district because of a very simple and correctable error is contrary to the goals and objectives of the E-Rate program and will cause unnecessary and undue harm to Knox County.

Conclusion

USAC erred in denying Knox County's Deadline Extension request and in denying the subsequent appeal of the denial. Knox County acknowledged the need for an Implementation Deadline extension and filed it in a timely fashion. Their clerical error should not be the basis for complete 'denial' of access to the previously approved funding for the eligible products/services to be delivered on the FRNs.

USAC's denial decisions should be reversed and the extension requests remanded to them for immediate approval.

Respectfully Submitted,

/s/ Kimberly M. Friends

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